

**Letter of Findings: 02-20200415**  
**Corporate Income Tax**  
**For the Fiscal Year Ending October 2018**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Indiana Business failed to establish that the Department's assessment of additional 2018 corporate income tax was incorrect because Indiana Business erred in calculating Net Operating Losses available to offset its 2018 adjusted gross income.

### ISSUE

#### **I. Corporate Adjusted Gross Income Tax - Net Operating Loss Carryforward.**

**Authority:** IC § 6-3-1-3.5(b); IC § 6-3-1-11; IC § 6-3-2-1(b); IC § 6-3-2-2; IC § 6-3-2-2.6(f); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); I.R.C. § 172; P.L. 105-34, § 1082.

Taxpayer argues that the Department erred in disallowing Net Operating Losses Taxpayer carried forward to its fiscal year 2018 corporate income tax return and then compounded the error by assessing Taxpayer additional corporate income tax.

### STATEMENT OF FACTS

Taxpayer is an Indiana business which files Indiana corporate income tax returns. Taxpayer filed a corporate income tax return for the fiscal year ending October 2018. The Indiana Department of Revenue ("Department") reviewed the return and concluded that Taxpayer underpaid its tax liability by approximately \$1,000.

In a letter dated July 1, 2020, the Department explained as follows:

A review of your Indiana C Corporation tax return for the tax period ending October 31, 2018, indicates that you owe an additional [\$1,000]. This amount represents the full liability due including all assessed penalties and interest to date.

Taxpayer disagreed with the assessment and submitted a protest to that effect. In its protest, Taxpayer explained:

A review of the documentation included with the "Notice of Proposed Assessment" discovered the Indiana Net Operating Loss amount was missing. The Indiana Net Operating Loss completely eliminated any taxable adjusted gross income.

Taxpayer provided a written schedule detailing the available Net Operating Losses ("NOL"), detailing the years and the amounts of NOLs that were claimed, and explaining the NOLs Taxpayer believed were available to offset the 2018 fiscal year adjusted gross income.

An administrative hearing was conducted by telephone during which Taxpayer's representative further explained the basis for the protest. This Letter of Findings results.

#### **I. Corporate Adjusted Gross Income Tax - Net Operating Loss Carryforward.**

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DISCUSSION

The issue is whether Taxpayer has met its burden of establishing that the available NOLs were sufficient to offset the adjusted gross income reported on its Indiana corporate income tax return for the year ending October 31, 2018.

Indiana law imposes on Taxpayer the burden of establishing that the \$1,000 proposed assessment was wrong.

As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486, fn. 9 (Ind. Tax Ct. 2012).

Indiana imposes a tax on the adjusted gross income of every corporation that has adjusted gross income derived from sources within Indiana. IC § 6-3-2-1(b); IC § 6-3-2-2. To compute the income subject to Indiana corporate income tax, Indiana adopts a multistep process to calculate a corporation's taxable Indiana adjusted gross income. *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 581 (Ind. 2014). Indiana generally follows the tax principles established in the federal law. IC § 6-3-1-11. Indiana statutes refer to the Internal Revenue Code to compute what is considered the taxpayer's Indiana income tax. IC § 6-3-1-3.5(b) provides the starting point to determine a corporation's taxable income, stating that the term "adjusted gross income" shall mean, "In the case of corporations the same as 'taxable income' (as defined in Section 63 of the Internal Revenue Code) adjusted as follows . . . ." In determining the taxpayer's Indiana adjusted gross income, Indiana first refers to I.R.C. § 63 as the beginning point. In other words, when used "[i]n the case of corporations," the term "'adjusted gross income' shall mean the same as 'taxable income' (as defined in Section 63 of the Internal Revenue Code)" with certain modifications. IC § 6-3-1-3.5(b). The taxpayer is entitled to carry over the NOLs under IC § 6-3-2-2.6.

IC § 6-3-2-2.6(c) provides in part:

An Indiana net operating loss equals:

- (1) the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, derived from sources within Indiana and adjusted for certain modifications required by [IC 6-3-1-3.5](#) as set forth in subsection (d)(1); plus
- (2) for taxable years beginning after December 31, 2017, the portion of the loss for a taxable year disallowed because of Section 461(l) of the Internal Revenue Code and incurred from Indiana sources, without any modifications under subsection (d). Any net operating loss under this subdivision shall be computed in a manner consistent with the computation of adjusted gross income under [IC 6-3](#). (*Effective July 1, 2018*).

IC § 6-3-2-2.6(f) provides:

- (f) Carryovers shall be determined under this subsection as follows:
  - (1) An Indiana net operating loss shall be an Indiana net operating loss carryover to each of the carryover years following the taxable year of the loss.
  - (2) An Indiana net operating loss may not be carried over for more than *twenty (20) taxable years* after the taxable year of the loss. (*Emphasis added*).

With certain exceptions not relevant here, IC § 6-3-2-2.6 follows the federal scheme for addressing and carrying forward NOLs.

I.R.C. § 172 originally provided in part:

- (a) Deduction allowed.--There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.
- (b) Net operating loss carrybacks and carryovers.--

(1) Years to which loss may be carried.--

(A) General rule.--Except as otherwise provided in this paragraph, a net operating loss for any taxable year--

(i) shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss, and

(ii) shall be a net operating loss carryover to each of the *15 taxable years following the taxable year of the loss.* (Effective to August 4, 1997) (*Emphasis added*).

In 1997, P.L. 105-34, § 1082 amended I.R.C. § 172 as follows:

(a) IN GENERAL.--Subparagraph (A) of section 172(b)(1) (relating to years to which loss may be carried) is amended--

(1) by striking "3" in clause (i) and inserting "2", and

(2) by striking "15" in clause (ii) and inserting "20".

The note to this provision, 26 U.S.C.A. § 172(c), stipulated the amendment's effective date:

The amendments made by this section shall apply to net operating losses for taxable years beginning after the date of the enactment of this Act.

As to Taxpayer's protest, what does all of this mean? Indiana law "piggybacks" on the federal Internal Revenue Code. The current version of the carryforward provision allows NOLs to be carried forward 20 years beginning August 5, 1997.

For years before August 5, 1997, the Internal Revenue Code allowed NOLs to be carried forward for 15 years and the amended statute, allowing a 20-year carryforward, was only effective for taxable years after August 4, 1997.

Taxpayer's own NOL schedule indicates that it carried forward losses tracing back to 1992. A review of that schedule establishes that certain of Taxpayer's pre-1997 losses had "expired" and could not be carried forward past their 15-year expiration date.

Taxpayer miscalculated the NOLs necessary to offset its 2018 adjusted gross income. In this case, Taxpayer has failed to meet its burden under IC § 6-8.1-5-1(c) of establishing that the Department's assessment was wrong.

### FINDING

Taxpayer's protest is respectfully denied.

December 8, 2020

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